

Union Calendar No. 230

105TH CONGRESS
1ST Session

H. R. 1544

[Report No. 105-395]

A BILL

To prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and rejection of, precedents established in the Federal judicial circuits.

NOVEMBER 8, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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[Report No. 105–395]

To prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial circuits.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1997

Mr. GEKAS (for himself and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 8, 1997

Additional sponsors: Mr. COOK, Mr. TALENT, Mr. GOODLATTE, Mr. SESSIONS, Mr. CALVERT, Mr. ENGLISH of Pennsylvania, Mr. SENSENBRENNER, Mr. STARK, Mr. WICKER, Mr. CANADY of Florida, Mr. BONIOR, Mr. SANDERS, Mr. NADLER, and Mr. BENTSEN

NOVEMBER 8, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 7, 1997]

A BILL

To prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial circuits.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Federal Agency Compli-*
 5 *ance Act”.*

6 **SEC. 2. PROHIBITING INTRACIRCUIT AGENCY NONACQUIES-**
 7 **CENCE IN APPELLATE PRECEDENT.**

8 *(a) IN GENERAL.—Chapter 7 of title 5, United States*
 9 *Code, is amended by adding at the end the following:*

10 **“§ 707. Adherence to court of appeals precedent**

11 *“(a) Except as provided in subsection (b), an agency*
 12 *(as defined in section 701(b)(1) of this title) shall, in ad-*
 13 *ministering a statute, rule, regulation, program, or policy*
 14 *within a judicial circuit, adhere to the existing precedent*
 15 *respecting the interpretation and application of such stat-*
 16 *ute, rule, regulation, program, or policy, as established by*
 17 *the decisions of the United States court of appeals for that*
 18 *circuit. All officers and employees of an agency, including*
 19 *administrative law judges, shall adhere to such precedent.*

20 *“(b) An agency is not precluded under subsection (a)*
 21 *from taking a position, either in administration or litiga-*
 22 *tion, that is at variance with precedent established by a*
 23 *United States court of appeals if—*

24 *“(1) it is not certain whether the administration*
 25 *of the statute, rule, regulation, program, or policy*

1 *will be subject to review by the court of appeals that*
2 *established that precedent or a court of appeals for*
3 *another circuit;*

4 “(2) *the Government did not seek further review*
5 *of the case in which that precedent was first estab-*
6 *lished, in that court of appeals or the United States*
7 *Supreme Court, because neither the United States nor*
8 *any agency or officer thereof was a party to the case*
9 *or because the decision establishing that precedent*
10 *was otherwise substantially favorable to the Govern-*
11 *ment; or*

12 “(3) *it is reasonable to question the continued*
13 *validity of that precedent in light of a subsequent de-*
14 *cision of that court of appeals or the United States*
15 *Supreme Court, a subsequent change in any pertinent*
16 *statute or regulation, or any other subsequent change*
17 *in the public policy or circumstances on which that*
18 *precedent was based.”.*

19 (b) *CLERICAL AMENDMENT.—The table of sections at*
20 *the beginning of chapter 7 of title 5, United States Code,*
21 *is amended by adding at the end of following new item:*

 “707. *Adherence to court of appeals precedent.”.*

1 **SEC. 3. PREVENTING UNNECESSARY AGENCY RELITIGA-**
2 **TION IN MULTIPLE CIRCUITS.**

3 (a) *IN GENERAL.*—Chapter 7 of title 5, United States
4 Code, as amended by section 2(a), is amended by adding
5 at the end the following:

6 **“§ 708. Supervision of litigation; limiting unnecessary**
7 **relitigation of legal issues**

8 “(a) *In supervising the conduct of litigation, the offi-*
9 *cers of any agency of the United States authorized to con-*
10 *duct litigation, including the Department of Justice acting*
11 *under sections 516 and 519 of title 28, United States Code,*
12 *shall ensure that the initiation, defense, and continuation*
13 *of proceedings in the courts of the United States within,*
14 *or subject to the jurisdiction of, a particular judicial circuit*
15 *avoids unnecessarily repetitive litigation on questions of*
16 *law already consistently resolved against the position of the*
17 *United States, or an agency or officer thereof, in precedents*
18 *established by the United States courts of appeals for 3 or*
19 *more other judicial circuits.*

20 “(b) *Decisions on whether to initiate, defend, or con-*
21 *tinue litigation for purposes of subsection (a) shall take into*
22 *account, among other relevant factors, the following:*

23 “(1) *The effect of intervening changes in perti-*
24 *nent law or the public policy or circumstances on*
25 *which the established precedents were based.*

1 “(2) *Subsequent decisions of the United States*
2 *Supreme Court or the courts of appeals that pre-*
3 *viously decided the relevant question of law.*

4 “(3) *The extent to which that question of law*
5 *was fully and adequately litigated in the cases in*
6 *which the precedents were established.*

7 “(4) *The need to conserve judicial and other par-*
8 *ties’ resources.*

9 “(c) *The Attorney General shall report annually to the*
10 *Committees on the Judiciary of the Senate and the House*
11 *of Representatives on the efforts of the Department of Jus-*
12 *tice and other agencies to comply with subsection (a).*

13 “(d) *A decision on whether to initiate, defend, or con-*
14 *tinue litigation is not subject to review in a court, by man-*
15 *damus or otherwise, on the grounds that the decision vio-*
16 *lates subsection (a).”.*

17 (b) *CLERICAL AMENDMENT.—The table of sections at*
18 *the beginning of chapter 7 of title 5, United States Code,*
19 *as amended by section 2(b), is amended by adding at the*
20 *end of following new item:*

 “708. *Supervision of litigation; limiting unnecessary relitigation of legal issues.”.*